



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/844,849	04/30/2001	Kathleen M. Moriarty	64860/RSM/KJB	2748

7590 01/04/2006
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, NY 10036

EXAMINER

PHILLIPS, HASSAN A

ART UNIT PAPER NUMBER

2151

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/844,849

Applicant(s)

MORIARTY, KATHLEEN M.

Examiner

Hassan Phillips

Art Unit

2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10,12,13,15-18 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-10,12,13,15-18 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to communications filed October 19, 2005.

Allowable Subject Matter

2. The indicated allowability of claims 1, 3-10, 12, 13, 15-18, 21-24 is withdrawn in view of the newly discovered reference(s) to Aviani et al. (hereinafter Aviani), U.S. Patent 6,742,044. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 5, 10, 12, 21, are rejected under 35 U.S.C. 102(e) as being anticipated by Aviani.

5. In considering claims 1 and 5, Aviani teaches a method of gathering information about a connection between a sender and a recipient in a network comprising the steps of: generating an information query by the sender (202), (col. 11,

lines 13-15); sending the information query to the recipient (222), (col. 11, lines 13-15); and receiving the information query at a border device (220) of the recipient, (col. 11, lines 13-22); and processing the information query at the border device according to a plurality of predetermined rules, wherein said predetermined rules provide for one of: providing selected information requested by the information query in a response to be sent to the sender, the selected information including address identification information that is different than that of the border device and different than that of the sender, (col. 11, lines 13-42); discarding the information query, (col. 11, lines 13-42); and passing the information query through the border device to the recipient for response, (col. 10, lines 6-25).

6. In considering claim 10, Aviani teaches a border device (220) positioned between a sender (202) and a recipient (222) for use in gathering information regarding a connection between the sender and the recipient in a network, the border device comprising: a receiver for receiving an information query from the sender addressed to the recipient, (col. 11, lines 13-15); a processor for processing the information query on behalf of the recipient to generate a response to said information query including selected information including address identification information that is different than that of the border device and different than that of the sender, (col. 11, lines 13-42); and a transmitter for sending the response including the selected information to the sender, (col. 11, lines 13-42).

7. In considering claim 12, it is inherent in the teachings of Aviani that the border device responds to information queries for a plurality of recipients, (col. 5, lines 41-54, col. 6, lines 40-50).

8. In considering claim 21, Aviani teaches the border device being a router, (col. 16, line 65 through col. 17, line 20).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3, 4, 8, 9, are rejected under 35 U.S.C. 103(a) as being unpatentable over Aviani in view of Vange et al. (hereinafter Vange), U.S. Patent Pub. No. 2002/0002686.

11. In considering claims 3 and 8, Aviani further teaches: storing at least a portion of the selected information sent to the sender at the sender, (col. 11, lines 32-40); and, utilizing the stored selected information from the response whenever an information query is generated, (col. 11, lines 40-42).

Although the disclosed method of Aviani shows substantial features of the claimed invention, it fails to expressly disclose: the information query corresponding to a predetermined group of address stored at the sender.

Nevertheless, in a similar field of endeavor, Vange teaches a method for overcoming denial of service attacks that includes: queries corresponding to predetermined groups of addresses stored at a sender (117), (page 5, paragraphs 53-54).

Thus, if not implicit in the teachings of Aviani, it would have been obvious to one of ordinary skill in the art to modify the teachings of Aviani with Vange to show the sender storing at least a portion of the selected information sent from the border device to the sender at the sender when a destination address of the information query corresponds to a predetermined group of addresses stored at the sender, and utilizing the stored selected information from the response whenever an information query is generated including any of the predetermined group of addresses stored at the sender. This would have facilitated communication between the sender and a recipient in the network by reducing the steps normally required for the sender to access the recipient in the network, (Vange, page 5, paragraph 54, Aviani, col. 11, lines 40-42).

12. In considering claims 4 and 9, it is implicit in the teachings of Vange that the stored information will be deleted after a predetermined period of time, (page 5, paragraph 54). One of ordinary skill in the art would combine the teachings of Aviani with Vange, for the reasons indicated in consideration of claims 3 and 8.

13. Claims 6, 13, 15, 22-24, are rejected under 35 U.S.C. 103(a) as being unpatentable over Aviani in view of Applicants Admitted Prior Art (AAPA).

14. In considering claims 6 and 15, although the disclosed method of Aviani shows substantial features of the claimed invention, it fails to expressly disclose: discarding the information query, when the query is too large.

Nevertheless, the discarding of an information query when the query is too large is a field of use limitation and not patentable distinction. Furthermore, the applicant admits that it was well known in the art to discard information queries for various reasons, (page 7, lines 1-5).

Thus it would have been obvious to one of ordinary skill in the art to modify the teachings of Aviani to show one of the plurality of predetermined rules providing for discarding the information query when the information query is of a size larger than a predetermined range of allowable sizes. This would have provided a well-known means for discarding information queries that appear to be malicious, thereby, providing an efficient means for detecting attackers and blocking communication between the attacker and a receiver, (AAPA, page 7, lines 1-5).

15. In considering claim 13, Aviani teaches a method of gathering information about a connection between a sender and a recipient in a network comprising the steps of: generating an information query by the sender (202), (col. 11, lines 13-15); sending

Art Unit: 2151

the information query to the recipient (222), (col. 11, lines 13-15); and receiving the information query at a border device (220) of the recipient, (col. 11, lines 13-22); and processing the information query at the border device according to a plurality of predetermined rules, wherein said predetermined rules provide for one of: providing selected information requested by the information query in a response to be sent to the sender, the selected information including address identification information that is different than that of the border device and different than that of the sender, (col. 11, lines 13-42); discarding the information query, (col. 11, lines 13-42); and passing the information query through the border device to the recipient for response, (col. 10, lines 6-25).

Although the disclosed method of Aviani shows substantial features of the claimed invention, it fails to expressly disclose: the packet being a performance measurement packet.

Nevertheless, Aviani does teach conducting performance measurements in order to determine a closest server to the sender, (col. 10, lines 26-55). Furthermore, performance measurement packets were well known in the art at the time of the present invention. The applicant admits this in the first two paragraphs under the section titled ***Description of Related Art***, (AAPA pages 1 and 2).

Thus, it would have been obvious to one of ordinary skill in the art to modify the teachings of Aviani to show the packet being a performance measurement packet. This would have advantageously provided an efficient means for testing the performance

between two or more hosts on the Internet, such as in cases where the closest server is determined to be used in a load balancing system, (AAPA page 2, paragraph 2).

16. In considering claims 22-24, Aviani further teaches: the border device responds on behalf of one or more other active or inactive address, (col. 11, lines 13-42).

Although the disclosed method of Aviani shows substantial features of the claimed invention, it fails to expressly disclose: the information query is selected from a group consisting of a service availability query, a system availability query, and a performance measurement query.

Nevertheless, performance measurement queries such as service availability queries, system availability queries, and performance measurements queries, were well known in the art at the time of the present invention. The applicant admits this in the first two paragraphs under the section titled ***Description of Related Art***, (AAPA pages 1 and 2).

Thus, it would have been obvious to one of ordinary skill in the art to modify the teachings of Aviani to show the information query is selected from a group consisting of a service availability query, a system availability query, and a performance measurement query. This would have advantageously provided an efficient means for testing the performance between two or more hosts on the Internet, such as in cases where the closest server is determined to be used in a load balancing system, (AAPA page 2, paragraph 2).

17. Claim 7, is rejected under 35 U.S.C. 103(a) as being unpatentable over Aviani in view of Templin et al. (hereinafter Templin), U.S. Patent 5,781,550 (supplied by applicant).

18. In considering claim 7, although the disclosed method of Aviani shows substantial features of the claimed invention, it fails to expressly disclose: the information query including predetermined identification information.

Nevertheless, information queries including predetermined identification information were well known in the art at the time of the present invention. In a similar field of endeavor, Templin teaches this in his discussion of the prior art. More specifically, Templin teaches: passing an information query through a border unit when the information query includes predetermined information, (col. 2, lines 22-29).

Thus it would have been obvious to one of ordinary skill in the art to modify the teachings of Aviani to show one rule of the plurality of predetermined rules providing for passing the information query through the border unit to the recipient for response when the information query includes predetermined identification information. This would have facilitated communication between the sender and a recipient in the network by instantly passing the information query through the border unit when the information query includes predetermined identification information, thereby, reducing the steps normally required for the sender to access the recipient in the network, (Aviani, col. 10, lines 17-25).

19. Claim 16, is rejected under 35 U.S.C. 103(a) as being unpatentable over Aviani in view of AAPA, and further in view of Templin.

20. In considering claim 16, although the disclosed method of Aviani shows substantial features of the claimed invention, it fails to expressly disclose: the information query including predetermined identification information.

Nevertheless, information queries including predetermined identification information were well known in the art at the time of the present invention. In a similar field of endeavor, Templin teaches this in his discussion of the prior art. More specifically, Templin teaches: passing an information query through a border unit when the information query includes predetermined information, (col. 2, lines 22-29).

Thus it would have been obvious to one of ordinary skill in the art to modify the teachings of Aviani to show one rule of the plurality of predetermined rules providing for passing the information query through the border unit to the recipient for response when the information query includes predetermined identification information. This would have facilitated communication between the sender and a recipient in the network by instantly passing the information query through the border unit when the information query includes predetermined identification information, thereby, reducing the steps normally required for the sender to access the recipient in the network, (Aviani, col. 10, lines 17-25).

21. Claims 17, 18, are rejected under 35 U.S.C. 103(a) as being unpatentable over Aviani in view of AAPA, and further in view of Vange.

22. In considering claim 17, Aviani further teaches: storing at least a portion of the selected information sent to the sender at the sender, (col. 11, lines 32-40); and utilizing the stored selected information from the response whenever an information query is generated, (col. 11, lines 40-42).

Although the disclosed method of Aviani shows substantial features of the claimed invention, it fails to expressly disclose: the information query corresponding to a predetermined group of address stored at the sender.

Nevertheless, in a similar field of endeavor, Vange teaches a method for overcoming denial of service attacks that includes: queries corresponding to predetermined groups of addresses stored at a sender (117), (page 5, paragraphs 53-54).

Thus, if not implicit in the teachings of Aviani, it would have been obvious to one of ordinary skill in the art to modify the teachings of Aviani with Vange to show the sender storing at least a portion of the selected information sent from the border device to the sender at the sender when a destination address of the information query corresponds to a predetermined group of addresses stored at the sender, and utilizing the stored selected information from the response whenever an information query is generated including any of the predetermined group of addresses stored at the sender. This would have facilitated communication between the sender and a recipient in the

Art Unit: 2151

network by reducing the steps normally required for the sender to access the recipient in the network, (Vange, page 5, paragraph 54, Aviani, col. 11, lines 40-42).

23. In considering claim 18, it is implicit in the teachings of Vange that the stored information will be deleted after a predetermined period of time, (page 5, paragraph 54). One of ordinary skill in the art would combine the teachings of Aviani with Vange, for the reasons indicated in consideration of claims 3 and 8.

Conclusion

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cohen et al., U.S. Patent 6,389,462 – discloses a method and apparatus for transparently directing requests for web objects to clients, (see abstract).

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hassan Phillips whose telephone number is (571) 272-3940. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2151

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP/
12/29/05


ZARNI MAUNG
SUPERVISORY PATENT EXAMINER